

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

GEORGE LOPEZ,	:	Civil No. 3:21-CV-1819
	:	
Plaintiff,	:	
	:	(Judge Mehalchick)
v.	:	
	:	
JOHN WETZEL, et al.,	:	(Magistrate Judge Carlson)
	:	
Defendants	:	

MEMORANDUM AND ORDER

I. Factual Background and Procedural History

This is a *pro se* prisoner civil rights action that was originally brought as a single lawsuit by six inmates held by the Department of Corrections challenging what they allege was unconstitutionally prolonged and severe solitary confinement by corrections staff. (Doc. 1). According to the plaintiffs they suffered severe emotional and psychological injuries due to this prolonged solitary confinement. (Id.) However, a review of the plaintiffs' complaint revealed that these alleged instances of solitary confinement occurred at different places and times over the past two decades. (Id.) Further, the complaint asserted that each individual prisoner plaintiff suffered from distinct emotional impairments which were exacerbated in different ways by their confinement. (Id.) Thus, factually these six plaintiffs' claims

involved disparate acts and actors which have had different and distinct impacts upon their lives.

On November 10, 2023, this case was referred to the undersigned for case management. Upon review, we noted that there were a number of motions pending in this case, including a motion signed by one plaintiff, George Lopez, who purported to speak on behalf of two other plaintiffs, Richard Poplawski and Gerald Watkins. (Doc. 135). In this motion these three inmate plaintiffs sought to sever their case from the complaints of plaintiffs Darien Houser, Ralph Stokes, and Jose Uderra. (Id.)

The defendants took no position with respect to this motion, “as it appears to be a dispute between the Plaintiffs.” (Doc. 154). However, there was no indication that Uderra, Houser, and Stokes were served with a copy of this pleading filed by their erstwhile co-plaintiffs. Moreover, it was uncertain if inmates Richard Poplawski and Gerald Watkins concurred in Lopez’s motion to sever parties. Therefore, we were unclear regarding the position of all of these other plaintiffs on this request. Recognizing that this motion highlighted a number of the difficulties, challenges, and perils inherent in multi-plaintiff *pro se* litigation, on November 28, 2023, we entered an order which denied the *pro se* motion to sever plaintiffs, (Doc. 135), without prejudice and directed the plaintiffs to individually show cause on or

before **December 18, 2023**, why their separate claims should not be severed into separate and distinct complaints. (Doc. 160).

We received some partial responses to this order, responses which highlighted the burgeoning procedural chaos and discord which the current collective *pro se* litigation created. Specifically, two of these inmate plaintiffs—Darien Houser and Ralph Stokes—objected to inmate Lopez’s plan to unilaterally jettison them this collective lawsuit. (Docs. 164 and 165). For his part, inmate Lopez filed a response which decries the lack of assistance and cooperation from his co-plaintiffs. (Doc. 170). Purporting then to speak on his own behalf, and on behalf of inmates Richard Poplawski and Gerald Watkins, Lopez agreed to the severance of these six cases. (Id.) Poplawski and Watkins did not separately respond to this order. The final *pro se* plaintiff, inmate Uderra, also did not respond to this court order.

Given this procedural posture, we recommended that the increasingly discordant claims of these six inmate plaintiffs be severed. (Doc. 172). The district court adopted this recommendation and these cases have now been severed. (Doc. 192).

It is against this backdrop that we turn to consider two motions attributed to the plaintiff, George Lopez, which seek disclosure of prior grievances filed by Lopez as well as Corrections policies relating to solitary confinement of death row inmates,

and incident reports relating to suicides of death row inmates. (Docs. 167¹, 182). The defendants have responded to these requests by arguing that Lopez's discovery demands were untimely in some instances, and by opposing Lopez's demands for information regarding suicides by other, unidentified inmates. As for Lopez's demands for copies of various grievances, the defendants indicate that some of the grievances requested by Lopez simply do not exist. Where grievances exist, the defendants acknowledge that there were some missteps in producing those grievances but state that all requested grievances have and will be produced. (Doc. 185).

These discovery issues are fully briefed and are, therefore, ripe for resolution. On these facts, as discussed below, Lopez's motions to compel, (Docs. 167, 182), will be DENIED, but we will direct the parties to explore means by which some statistical data regarding the incidence of death row inmate suicide in solitary confinement can be identified and produced.

II. **Discussion**

Rulings regarding the proper scope of discovery are matters consigned to the court's discretion and judgment. A court's decisions regarding the conduct of

¹ Doc. 167 is docketed as a motion filed by Plaintiff George Lopez, but a review of the motion indicates that it was authored by inmate Houser. We have disposed of this motion on its merits in Houser's case and will direct that the motion be terminated in this case as well.

discovery will be disturbed only upon a showing of abuse of that discretion. Marroquin-Manriquez v. I.N.S., 699 F.2d 129, 134 (3d Cir. 1983). This far-reaching discretion also extends to rulings by United States Magistrate Judges on discovery matters. In this regard:

District courts provide magistrate judges with particularly broad discretion in resolving discovery disputes. See Farmers & Merchs. Nat'l Bank v. San Clemente Fin. Group Sec., Inc., 174 F.R.D. 572, 585 (D.N.J. 1997). When a magistrate judge's decision involves a discretionary [discovery] matter . . . , "courts in this district have determined that the clearly erroneous standard implicitly becomes an abuse of discretion standard." Saldi v. Paul Revere Life Ins. Co., 224 F.R.D. 169, 174 (E.D. Pa. 2004) (citing Scott Paper Co. v. United States, 943 F. Supp. 501, 502 (E.D. Pa. 1996)). Under the standard, a magistrate judge's discovery ruling "is entitled to great deference and is reversible only for abuse of discretion." Kresefky v. Panasonic Commc'ns and Sys. Co., 169 F.R.D. 54, 64 (D.N.J. 1996); see also Hasbrouck v. BankAmerica Hous. Servs., 190 F.R.D. 42, 44-45 (N.D.N.Y. 1999) (holding that discovery rulings are reviewed under abuse of discretion standard rather than de novo standard); EEOC v. Mr. Gold, Inc., 223 F.R.D. 100, 102 (E.D.N.Y. 2004) (holding that a magistrate judge's resolution of discovery disputes deserves substantial deference and should be reversed only if there is an abuse of discretion).

Halsey v. Pfeiffer, No. 09-1138, 2010 WL 2735702, at *1 (D.N.J. Sept. 27, 2010).

The exercise of this discretion is guided, however, by certain basic principles. At the outset, Rule 26(b) of the Federal Rules of Civil Procedure generally defines the scope of discovery permitted in a civil action, prescribes certain limits to that discovery, and provides as follows:

(b) Discovery Scope and Limits.

(1) *Scope in General*. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b).

Thus, our discretion is limited in a number of significant ways by the scope of Rule 26 itself, which provides for discovery of only “nonprivileged matter that is relevant to any party’s claim or defense.” Accordingly, “[t]he Court’s discretion in ruling on discovery issues is, therefore, restricted to valid claims of relevance and privilege.” Robinson v. Folino, No. 14-227, 2016 WL 4678340, at *2 (citing Jackson v. Beard, No. 11-1431, 2014 WL 3868228, at *5 (M.D. Pa. Aug. 6, 2014) (“Although ‘the scope of relevance in discovery is far broader than that allowed for evidentiary purposes, it is not without its limits.’ Courts will not permit discovery where a request is made in bad faith, unduly burdensome, irrelevant to the general subject matter of the action, or relates to confidential or privileged information”) (internal citations omitted)).

Therefore, at the outset, it is clear that Rule 26's definition of that which can be obtained through discovery reaches any nonprivileged matter that is relevant to any party's claim or defense, and valid claims of relevance and privilege still cabin and restrict the court's discretion in ruling on discovery issues. Furthermore, the scope of discovery permitted by Rule 26 embraces all relevant information, a concept which is not confined to admissible evidence but is also defined in the following terms: "Information within this scope of discovery need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1). Rather, Rule 26 states that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." This concept of relevance is tempered, however, by principles of proportionality. Thus, we are now enjoined to also consider whether the specific discovery sought is "proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). "Thus, it has been said that the amended rule 'restores the proportionality factors to their original place in defining the scope of discovery.' " Fassett v. Sears Holdings Corp., 319 F.R.D. 143, 150 (M.D. Pa. 2017) (quoting Wertz v. GEA Heat Exchangers Inc., No. 1:14-CV-1991, 2015 WL 8959408, at *2 (M.D. Pa. Dec. 16, 2015)).

A party moving to compel discovery bears the initial burden of proving the relevance of the requested information. Morrison v. Philadelphia Housing Auth., 203 F.R.D. 195, 196 (E.D. Pa. 2001). Once that initial burden is met, “the party resisting the discovery has the burden to establish the lack of relevance by demonstrating that the requested discovery (1) does not come within the broad scope of relevance as defined under Fed. R. Civ. P. 26(b)(1), or (2) is of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure.” In re Urethane Antitrust Litigation, 261 F.R.D. 570, 573 (D. Kan. 2009).

Further:

One other immutable factor governs the scope of discovery under Rule 26. “It is an obvious truism that a court should not enter an order compelling a party to produce documents where the documents do not exist.” Wells v. JPC Equestrian, Inc., No. 3:13-CV-2575, 2014 WL 5641305, at *4 (M.D. Pa. Nov. 4, 2014). It is clear, therefore, that the court cannot compel the production of things that do not exist. Nor can the court compel the creation of evidence by parties who attest that they do not possess the materials sought by an adversary in litigation. See, e.g., AFSCME District Council 47 Health and Welfare Fund v. Ortho-McNeil-Janssen Pharmaceuticals, Inc., No. 08-5904, 2010 WL 5186088 (E.D. Pa. Dec. 21, 2010); Knauss v. Shannon, No. 08-1698, 2009 WL 975251 (M.D. Pa. April 9, 2009). See Lawson v. Love's Travel Stops & Country Stores, Inc., No. 1:17-CV-1266, 2019 WL 5622453, at *4 (M.D. Pa. Oct. 31, 2019).

Palmer v. York Cnty., Pennsylvania, No. 1:20-CV-539, 2022 WL 4473595, at *2 (M.D. Pa. Sept. 26, 2022). These legal benchmarks guide us in consideration of Lopez’s motions to compel.

As we construe it, in these discovery motions Lopez seeks two categories of information. First, he demands production of various grievances which he has filed over time objecting to the conditions of his confinement. As for these demands for copies of various grievances, the defendants indicate that some of the specific grievances requested by Lopez simply do not exist. Since “[i]t is clear that the court cannot compel the production of things that do not exist,” Tech v. United States, 284 F.R.D. 192, 198 (M.D. Pa. 2012), this request for production of records that the defendants have stated do not exist will be denied. Further, where grievances exist, the defendants have candidly acknowledged that there were some missteps in producing those grievances but state that all requested grievances have and will be produced. In light of this representation that the existing grievances have been produced, the request to compel further production of grievances will be dismissed as moot. See Hopson v. Pennsylvania Bd. of Prob. & Parole, No. 3:10-CV-782, 2011 WL 2393872, at *2 (M.D. Pa. June 13, 2011).

Lopez has also sought incident reports relating to inmate suicides involving prisoners who are not parties to this litigation. Prisoner requests for personal information relating to other inmates who are not parties to litigation raise particular privacy and security concerns. Indeed, as we have noted these demands:

are precisely the kinds of sweeping, generalized and overly broad discovery requests judges in the Middle District of Pennsylvania have rejected as being not only overly broad, but unduly infringing upon the privacy interests of other inmates who may have sought to grieve

unrelated issues that they had with staff. See, e.g., Montanez v. Tritt, Civ. No. 3:14-CV-1362, 2016 WL 3035310, at *4 (M.D. Pa. May 26, 2016) (denying motion to compel production of incident reports, grievances and other documents involving other inmates where they were found to be “overly broad, irrelevant, confidential, [and to] bear no sufficient connection to this case and raise obvious privacy and security issues.”) (Mariani, J.); Lofton v. Wetzel, Civ. No. 1:12-CV-1133, 2015 WL 5761918, at *2 (M.D. Pa. Sept. 9, 2015) (Conner, C.J.) (“It is apparent that [the plaintiff’s] requests for ‘any and all’ records of inspection, and ‘all’ incident reports and grievances are a grossly overstated fishing expedition. [His] request for incident reports and grievances regarding other inmates raises obvious privacy and security issues, and the relevance of such information is questionable at best.”); Sloan v. Murray, No. 3:11-CV-994, 2013 WL 5551162, at *4 (M.D. Pa. Oct. 8, 2013) (Caputo, J.) (denying motion to compel grievance responses that concerned other inmates, citing DOC policy prohibiting inmates from receiving information about one another); Torres v. Clark, Civ. No. 1:10-CV-1323, 2011 WL 4898168, at *2-3 (M.D. Pa. Oct. 13, 2011) (Caldwell, J.) (denying motion to compel inmate request for discovery of 27-months of grievances about a specific cell block, finding it to be overly broad, burdensome, and potentially implicating privacy interests of other inmates); McDowell v. Litz, Civ. No. 1:CV-08-1453, 2009 WL 2058712, at *3 (M.D. Pa. July 10, 2009) (Rambo, J.) (finding requests for discovery of grievances filed by non-party inmates to be “overbroad and overly burdensome” and agreeing with the defendants’ “concerns about accessing private information with respect to other inmates’ grievances.”); Callaham v. Mataloni, Civ. No. 4:CV-06-1109, 2009 WL 1363368, at *3-4 (M.D. Pa. May 14, 2009) (Jones, J.) (denying motion to compel, inter alia, grievances relating to medical treatment of other inmates, citing privacy concerns); cf. Banks v. Beard, Civ. No. 3:CV-10-1480, 2013 WL 3773837, at *5 (M.D. Pa. July 17, 2013) (Munley, J.) (denying motion to compel account statements for other inmates despite plaintiff’s claim of relevance).

Torres v. Harris, No. 4:17-CV-1977, 2019 WL 265804, at *4 (M.D. Pa. Jan. 18, 2019). Therefore, these demands, which as propounded seek highly personal details relating to these inmates, will be denied without prejudice to the parties exploring

whether some arguably relevant but generalized information regarding the incidence of death row inmate suicide may exist and be produced in a format that does not violate the personal privacy of specific prisoners.

An appropriate order follows.

III. Order

In accordance with the accompanying Memorandum, Lopez's motions to compel, (Docs. 167, 182), are DENIED, but we will direct the parties to explore means by which some statistical data regarding the incidence of death row inmate suicide in solitary confinement can be identified and produced.

So ordered this 6th day of May 2024.

S/Martin C. Carlson

Martin C. Carlson

United States Magistrate Judge